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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945

No. **1142**

RUDOLPH MEJIA, ET AL.,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT AND BRIEF IN SUPPORT THEREOF.

M. A. GRACE,
EDWIN H. GRACE,
Attorneys for Petitioners.

I N D E X

	Page
Petition for writ of certiorari	1-7
Jurisdiction	2
Opinions Below	2
Summary Statement	2
Questions Presented	4
(1) Should not words "damages caused by a public vessel of the United States" as used in Public Vessels Act,, 46 U.S.C.A. be interpreted as including damages for death on navigable waters of state as result of collision between public vessel of the United States and a privately owned vessel	2, 4
(2) Does Public Vessel Act create liability for death or is that right solely created by State statute	4
(3) Does 2 year provision for filing suits against United States control or does provision of State Statute govern	4
(4) If petitioners' rights extinguish as Circuit Court of Appeals held whether petitioners delay in filing suit should be exercised on ground pleaded	5
Reasons for granting writ	5-7
(1) The Circuit Court of Appeals has decided a question of general importance relating to the construction of federal statute	5
(2) Decision below in conflict with earlier decisions in First and Second Circuit	5
(3) Decision below unduly restricts the class of cases authorized by the Public Vessels Act....	5
(4) Scope of word "damages" as including death	

INDEX—(Continued)

	Page
never passed upon by this Court and it is important that this court determine its meaning	5
(5) Effect of decision below would destroy uniformity required under Public Vessels Act providing for filing of suits in admiralty	6
Brief in Support of Petition	9-14

ARGUMENT

First Point

Reference to earlier decisions of First and Second Circuit in conflict with decision below	9, 10
--	-------

Second Point

Quotation of applicable provision of Public Vessels Act	11
Quotation of applicable provisions of Suits in Admiralty Act	11

Third Point

Quotation from <i>Engel v. Davenport</i> and citation of <i>Just v. Chambers</i> , both decisions of this Court as to uniformity	13
--	----

INDEX OF CASES

<i>Dobson v. United States</i> , 55 F. 2d 674 (D. C. Mass.) affirmed on opinion below, 73 F. 2d 1016, C.C.A. 1	5, 10
<i>Engel v. Davenport</i> , 271 U.S. 33, 39	13
<i>Just v. Chambers</i> , 312 U.S. 383	14
<i>New England Maritime Co. v. United States</i> , 27 F. 2d 807, C.C.A. 2	5, 9

STATUTES

Applicable provisions of Public Vessels Act	2, 12
Applicable provisions of State in Admiralty Act	3, 12

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PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:

Petitioners, Rudolph Mejia and Elvidia Naquin, pray that a Writ of Certiorari issue to review the decision of the United States Circuit Court of Appeals for the Fifth Circuit composed of two judges filed December 28, 1945, affirming a final decree in admiralty entered in the District Court for the Eastern District of Louisiana on December 23, 1944, dismissing the libel filed under the Public Vessels Act.

JURISDICTION

Jurisdiction is based on Section 240 (a) of the Judicial Code as amended, 28 U. S. Code 347. Rehearing was denied on January 25, 1946.

OPINIONS BELOW

The opinion of the District Court (R. 9) is reported in 57 F. Supp. 1015. The opinion of the Circuit Court of Appeals (R. 27) is reported in 152 F. 2d 686.

SUMMARY STATEMENT

On February 16, 1946, or approximately sixteen months after the death of libelants two children by drowning as a result of a collision which occurred on the Mississippi River in the State of Louisiana between a privately owned vessel on which they were passengers and a public vessel of the United States, petitioners herein filed a libel against the United States of America to recover damages sustained by libelants as a result of the death of their children caused by a public vessel of the United States.

The libel was filed under the Public Vessels Act, 46 U. S. C. A. 781 *et seq.* in part providing that:

"A libel in personam in admiralty may be brought against the United States * * *, for damages caused by a public vessel of the United States * * *"

and which act by reference and insofar as the provisions thereof are not inconsistent thereunder adopts the provi-

sions of the Suits in Admiralty Act, 46 U. S. C. A. 741 *et seq.* 745, reading in part as follows:

"Suits authorized by this chapter may be brought only on causes of action arising since April 6, 1917: provided that suits based on causes of action arising prior to the taking effect of this chapter shall be brought within one year after this chapter goes into effect and all other suits hereunder shall be brought within two years after the cause of action arises * * *"

The United States appeared in the proceeding and notwithstanding that the libel was filed well within the two year limitation period of the Public Vessels Act excepted to the libel upon the sole ground that

"The right of libelants to bring this action depends solely upon a statute of the State of Louisiana, namely Article 2315 of the Civil Code,"

and urged therein that as said state statute limits the time within which said right must be exercised to one year from the time said right accrued, and as the libel was not filed within the said one year period of the state act, libelants' right was lost and did not exist when this libel was filed (R. 7).

The District Court maintained this exception and dismissed the libel. Thereupon petitioner moved to be allowed to amend its libel by setting out in said motion what it considered equitable excuses for not filing the libel within the one year period provided in the state death act namely article 2315 of the Louisiana Civil Code.

The District Judge denied petitioner the right to file the amended libel. The facts which libelant urged as constituting equitable excuse are set out in the motion to amend. (R. 8.)

The United States Circuit Court of Appeals composed of two judges affirmed the judgment of the District Court in dismissing the libel and in denying libelant petitioner herein, the right to amend. (R. 27.)

QUESTIONS PRESENTED

(1) Did Congress in passing the Public Vessels Act, 46 U. S. C. A. 781 and in providing for the filing of a libel in admiralty for damages caused by a public vessel of the United States intend that the word "damages" should be interpreted, as the Circuit Court of Appeals herein held, as not including damages for death resulting from a collision on the Mississippi River, within the state of Louisiana, between a public vessel of the United States, and a privately owned vessel, and resulting in death by drowning of two passengers on the privately owned vessel?

(2) Does the Public Vessels Act, 46 U. S. C. A. 781 create a liability for death caused by a public vessel of the United States, as in the instant case or is such liability solely created by state death statutes wherein death is so caused?

(3) Does the period of two years after the cause of action arose as provided in the Suits in Admiralty Act, 46 U. S. C. A. made applicable to the Public Vessels Act,

within which to file a libel in admiralty against the United States, apply to claims for death in admiralty caused by a public vessel of the United States, or does the time as fixed by the state statutes to file suit, control?

(4) If as the Circuit Court of Appeals held libelants rights were extinguished by the terms of the state statute * * whether petitioner's delay in bringing this admiralty suit should not have been excused on the grounds pleaded?

REASONS FOR GRANTING THE WRIT

(1) The Circuit Court of Appeals has decided a question of general importance relating to the construction of a federal statute.

(2) The decision below is in conflict with earlier decisions in the First and Second circuit in the following cases:

New England Maritime Co. v. United States, 55 F. (2d) 674 (D. C. Mass.) *affd. on opinion* below 73 F. (2d) 1016 C. C. A. 1;
Dobson v. United States, 27 F. (2d) 807 C. C. A.

(3) The decision below in holding that the Public Vessels Act does not create an action for death in admiralty has unduly restricted the class of cases in which suit against the United States is authorized by the Public Vessels Act, contrary to the plain and expressed intention of Congress.

(4) The scope of the meaning of the word "damages" as including death as used in the Public Vessels Act has

never been passed upon by this court, and it is important that this court determine the meaning of the word damages as used in said act for guidance of the inferior courts especially because of the conflict of the decision of those courts.

(5) The decision of the Circuit Court of Appeals in applying a state statute and the time limit therein contained within which suits filed under a statute granting the right to sue the United States in Admiralty for damages caused by a public vessel of the United States should be filed destroys that uniformity required in such admiralty matters wherein an exclusive federal jurisdiction is involved, and is in conflict with the principals laid down in the case of *Just v. Chambers*, 312 U. S. 383.

Wherefore petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Fifth Circuit commanding that court to certify and to send to this Court for its review and determination on a day certain to be named therein a full and complete transcript of the record of all proceedings of said court in the above entitled cause and that the decision of the said Circuit Court of Appeals in said case be reversed and that your petitioners have such other and further relief in the premises as may be just.

Rudolph Mejia and Elvidia Naquin,
wife of Rudolph Mejia, Petitioners

By M. A. GRACE,
EDWIN H. GRACE,
Counsel.

CERTIFICATE

I hereby certify that I have examined the foregoing petition, that in my opinion it is well founded and entitled to the favorable consideration of the Court and that it is not filed for purposes of delay.

M. A. GRACE,
Counsel,
Hibernia Bank Building,
New Orleans, Louisiana.

New Orleans, Louisiana
April 17, 1946.



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. _____

RUDOLPH MEJIA, ET AL.,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION

FIRST POINT

THE DECISION BELOW IS IN CONFLICT WITH
EARLIER DECISIONS IN THE FIRST AND
SECOND CIRCUIT.

In *New England Maritime Co. v. United States*, 55
F. 2d 674 D. C. Mass., on the opinion below, 73 F. 2d 1016
C. C. A. 1, suits were brought under the Public Vessels Act
for the death of three members of the crew of the schooner

Mills sunk in collision with the destroyer Childs and who lost their lives by drowning.

In construing the Public Vessels Act the District Court at page 685 says:

"The Government in its answer has claimed that the words in the Public Vessels Act, 'for damages caused by a public vessel of the United States,' are not applicable where a person has suffered death by reason of a collision.

"I think the libelants in these death cases are correct in saying that a broad construction should be placed upon this act, that it was obviously the purpose of the act to waive the sovereign's immunity with respect to accidents on the high seas caused by public vessels, and thereby relieve Congress of the multiplicity of special acts necessary to compensate persons who had suffered damages either to their person or property. The statute is remedial, and, under well-settled practice of statutory construction, should be liberally construed.

"I do not understand that counsel for the government finds any fault with this broad construction given to the statute, but raises only the question that the loss of Pogson, Captain Chaney, and the cook was not the direct result of the negligence of the Childs, assuming such negligence to exist, but was rather the result of an intervening cause."

In the case of *Dobson v. United States*, 27 F. 2d 807, C. C. A. 2 Cir., a libel was filed by the legal representa-

tives (for the benefit of the widower and children) of a deceased naval officer who lost his life by the sinking of the United States submarine S-51 in collision with the City of Rome, a privately owned vessel. At page 807 the court in part says:

“Appellee, on the other hand, argues that the statute should be construed as limiting recovery to damages to property and not contemplating compensation for loss of life. We do not find it necessary to determine this question in the present case. The phrase ‘damages caused by a public vessel of the United States’ would seem sufficient to include loss of life occasioned by the unseaworthy condition of the ship, even though this operates through the intermediation of collision with another vessel, and it may be assumed *arguendo* that, were the suit brought for the death of a passenger or member of the crew of the City of Rome, caused by the collision, we would sustain it; * * *”

While recovery was denied it was not on the ground that the word “damage caused by a public vessel of the United States” did not include claims for death but was on the ground that the government had made provisions for reimbursing those in the Naval services for such claims.

SECOND POINT

PUBLIC VESSELS ACT CREATED RIGHTS

The Public Vessels Act, 46 U. S. C. A. 781 *et seq.* created rights that did not exist prior to its enactment. This is evidenced by 781 of said act and which in provides that:

"A libel in personam in admiralty may be brought against the United States, * * * for damages caused by a public vessel of the United States * * *"

Paragraph 782 providing for the venue in suits thereunder in part provides:

"782 Such suits shall be brought in the district court of the United States *in which the vessel charged with creating the liability is found.*" (Emphasis supplied.)

The provision of the Suits in Admiralty Act, 46 U. S. C. A. 741 and its venue provisions are differently worded. Paragraph 742 in part reads:

"In case where if such vessel were privately owned or operated * * * a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States * * * provided that such vessel is employed as a merchant vessel * * Such suit shall be brought in the district * * * in which *the vessel or cargo charged with liability is found.*" (Emphasis supplied.)

If Congress intended the words of Public Vessels Act "* * damages caused by a public vessel of the United States" to include claims for death then the holding of the Circuit Court of Appeals that: (R. 29)

"There is no statute in admiralty allowing claims

for death upon navigable waters within any state except as to seamen.”
is clearly erroneous.

THIRD POINT UNIFORMITY REQUIRED

If under the Public Vessels Act *supra*, in death claims the state death statute must be looked to for a cause of action, then this statutory admiralty proceeding and with respect to whether or not under the state statute contributory negligence is a bar to recovery, the time within which suits should be instituted under this admiralty statute would be left to the varying provisions of the state statutes. In the case of *Engel v. Davenport*, 271 U. S. 33, the court at page 39 says:

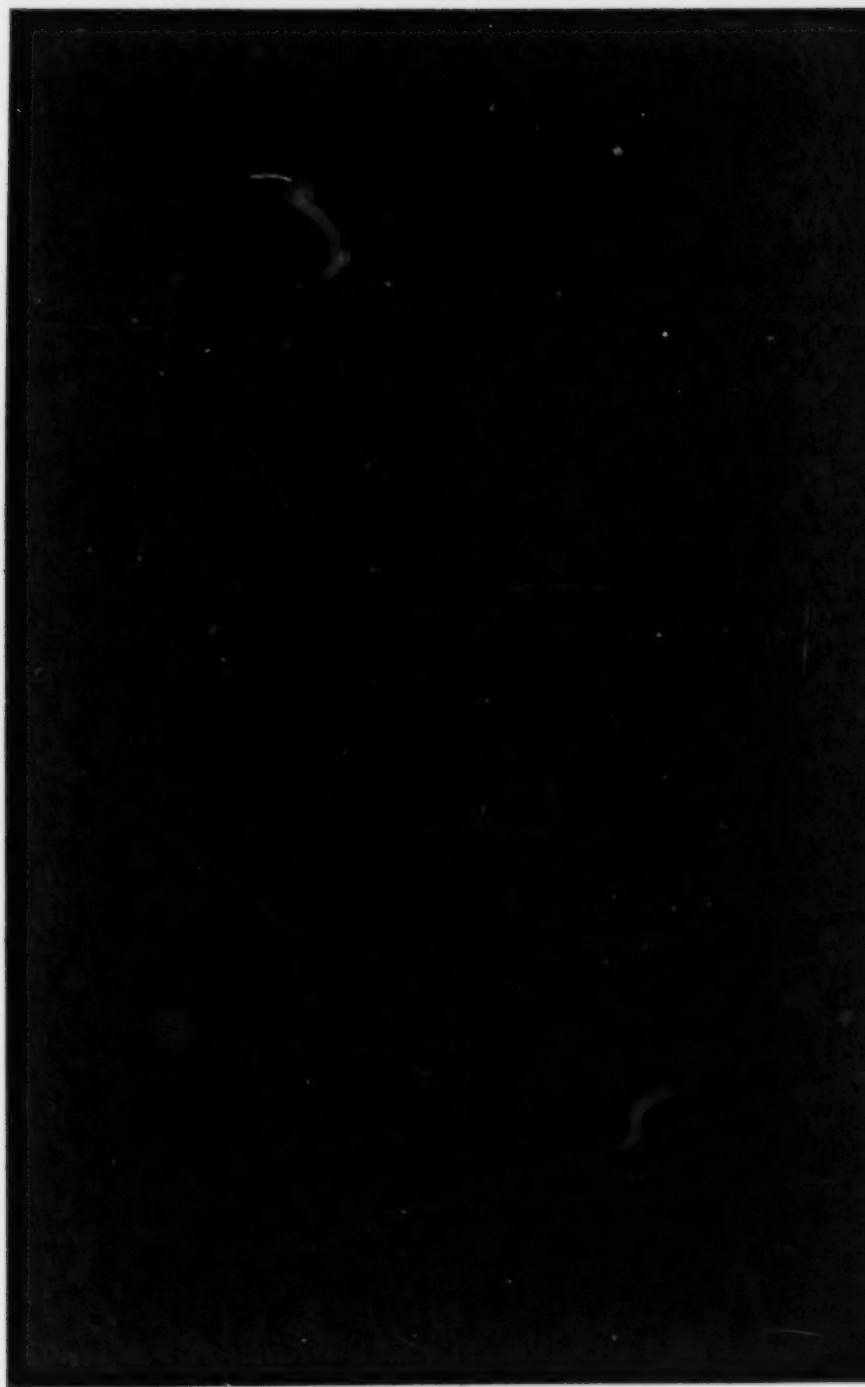
“In The Panama R. Co. Case, p. 392, it was held that the contention that the Merchant Marine Act did not possess the uniformity in operation essential to its validity as a modification of the maritime law, was unfounded, since the Employers’ Liability Act, which it adopted, had a uniform operation, which could not be deflected from ‘by local statutes or local views of common-law rules.’ The period of time within which an action may be commenced is a material element in such uniformity of operation. And plainly, Congress, in incorporating the provisions of the Employers’ Liability Act into the Merchant Marine Act, did not intend to exclude a provision so material, and to permit the uniform operation of the Merchant Marine Act to be destroyed by the varying provisions of the state statutes of limitation.”

As the essential features of an exclusive federal jurisdiction is involved in the Public Vessels Act uniformity in its interpretation is required. *Just v. Chambers*, 312 U. S. 383.

Respectfully submitted,

M. A. GRACE,
EDWIN H. GRACE,
Attorneys for Petitioners.





INDEX

Opinions below.....	Page
Jurisdiction.....	1
Question presented.....	1
Statutes involved.....	2
Statement.....	2
Argument.....	3
Conclusion.....	8
Appendix.....	9

CITATIONS

Cases:

<i>Alaska, The</i> , 130 U. S. 201.....	4
<i>American Stevedores, Inc. v. Porello and the United States</i> , No. 996, this Term, certiorari granted, May 6, 1946.....	6
<i>Canadian Aviator, Ltd. v. United States</i> , 324 U. S. 215.....	4, 6
<i>Dobson v. United States</i> , 27 F. 2d 807, certiorari denied, 278 U. S. 653.....	5, 6
<i>Finn v. United States</i> , 123 U. S. 227.....	8
<i>Goodwin v. Bodcaw Lumber Co.</i> , 109 La. 1050.....	4
<i>Harrisburg, The</i> , 119 U. S. 199.....	4, 5
<i>Just v. Chambers</i> , 312 U. S. 383.....	7
<i>Munro v. United States</i> , 363 U. S. 36.....	8
<i>New England Maritime Co. v. United States</i> , 55 F. 2d 674, affirmed on opinion below, <i>sub nom. United States v.</i> <i>Gould</i> , 73 F. 2d 1016.....	5, 6
<i>Ritter v. United States</i> , 28 F. 2d 265.....	8
<i>State of Maine v. United States</i> , 134 F. 2d 574, certiorari denied, 319 U. S. 772.....	4
<i>Thompson v. Gallien</i> , 127 F. 2d 664.....	4
<i>United States v. Utz</i> , 80 Fed. 848.....	8
<i>Western Fuel Co. v. Garcia</i> , 257 U. S. 233.....	4, 5

Statutes:

Death on the High Seas Act of March 30, 1920, 41 Stat. 537, 46 U. S. C. 761-768.....	5, 6
Suits in Admiralty Act of March 9, 1920, 41 Stat. 525, as amended, 47 Stat. 420, 46 U. S. C. 741, <i>et seq.</i> :	
Sec. 2.....	7, 11
Sec. 5.....	4, 12
Public Vessels Act of March 3, 1925, 43 Stat. 1112-1113, 46 U. S. C. 781-789:	
Section 1.....	4, 10
Section 2.....	4, 7, 10
Revised Civil Code of Louisiana, Article 2315.....	4, 9



In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 1142

RUDOLPH MEJIA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for the Eastern District of Louisiana (R. 9-11) is reported in 57 F. Supp. 1015. The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 26-30) is reported in 152 F. 2d 686.

JURISDICTION

The judgment of the circuit court of appeals was entered on December 28, 1945 (R. 30). A petition for rehearing, filed by petitioners on January 18, 1946 (R. 31-36), was denied on January 25, 1946 (R. 37). The petition for a writ of

certiorari was filed on April 20, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a libel in admiralty for wrongful death caused by a public vessel of the United States may be maintained if filed after the expiration of the time permitted for the bringing of an action for wrongful death by the statute of the State within whose territorial waters death occurred.

STATUTES INVOLVED

The pertinent provisions of the Public Vessels Act, 43 Stat. 1112, 46 U. S. C. 781, *et seq.*, the Suits in Admiralty Act, 41 Stat. 525, as amended, 47 Stat. 420, 46 U. S. C. 741, *et seq.*, and the provisions of Article 2315 of the Revised Civil Code of Louisiana, are set forth in the Appendix, *infra*, pp. 9-12.

STATEMENT

On February 16, 1944, petitioners, seeking to recover for the wrongful death of their two minor children, filed a libel in admiralty, in the District Court of the United States for the Eastern District of Louisiana, against the United States under the Public Vessels Act, 43 Stat. 1112-1113, 46 U. S. C. 781-789. The libel (R. 1-6) alleged that, due to the negligent operation of the United States Army Tug "Lt. Col. Herbert L. Kidwell", petitioners'

children had been drowned on October 12, 1942, following a collision between the "Kidwell" and a motor vessel in which they were passengers. The accident occurred on the Mississippi River within the territorial limits of the State of Louisiana (R. 3).

The United States filed an exception to the libel, seeking its dismissal on the ground that petitioners' right to bring the action depended solely upon Article 2315 of the Civil Code of Louisiana (*infra*, pp. 9-10), and that said right had not been exercised within the one-year period provided by that statute (R. 7-8).

On November 13, 1944, the district court sustained the exception to the libel (R. 9-11). Petitioners thereafter moved to amend the libel so as to set forth certain facts claimed to constitute an "equitable excuse" for not having filed the libel within the one-year period (R. 11-16). This motion was denied by the district court (R. 17), which, on December 23, 1944, entered its decree dismissing the libel (R. 18). On appeal, the circuit court of appeals affirmed the judgment of the district court (R. 30).

ARGUMENT

The court below held that petitioners' right to maintain the action "was created by Article 2315 of the Louisiana Civil Code [*infra*, pp. 9-10] and was extinguished by the terms of the same statute when it was not enforced within one year"

(R. 27). In so holding, the court below was clearly correct. Article 2315 of the Louisiana Civil Code is the sole statute of that State conferring a right of action for wrongful death and such right, if not exercised within the prescribed one-year period, is extinguished. *Goodwin v. Bodcaw Lumber Co.*, 109 La. 1050, 1066; *Thompson v. Gallien*, 127 F. 2d 664 (C. C. A. 5). Petitioners assert, however, that the Public Vessels Act, 46 U. S. C. 781-789, creates an independent right of action against the United States for wrongful death "caused by a public vessel" and that they may maintain the instant libel since it was filed within the two-year limitation period prescribed for such an action by the Suits in Admiralty Act (Pet. 2-3). Section 5, Appendix, *infra*, p. 12; see Section 2 of the Public Vessels Act, *infra*, note 2, p. 7.

Section 1 of the Public Vessels Act, 46 U. S. C. 781, permits the maintenance of a "libel in personam in admiralty * * * for damages caused by a public vessel * * *." An action to be maintained thereunder must be one otherwise cognizable in admiralty. *State of Maine v. United States*, 134 F. 2d 574 (C. C. A. 1), certiorari denied, 319 U. S. 772; cf. *Canadian Aviator, Ltd. v. United States*, 324 U. S. 215, 228. Neither under the general maritime law nor at common law could an action for wrongful death be maintained. *The Harrisburg*, 119 U. S. 199, 213; *The Alaska*, 130 U. S. 201, 209; *Western Fuel Co. v. Garcia*,

257 U. S. 233, 240. While Congress has provided a right of action for wrongful death on the high seas, 46 U. S. C. 761, *et seq.*, it has made no such provision for a right of action for death of persons such as petitioners' children upon navigable waters within any State. Section 7 of the Death on the High Seas Act, 41 Stat. 538, 46 U. S. C. 767. An action for wrongful death occurring upon such waters may be maintained only to the extent that the State upon whose waters the death occurred has provided therefor. As this Court has held, when "death * * * results from a maritime tort committed on navigable waters within a State whose statutes give a right of action on account of death by wrongful act, the admiralty courts will entertain a libel *in personam* for the damages sustained by those to whom such right is given." *Western Fuel Co. v. Garcia*, 257 U. S. 233, 242. But since such causes of action are entirely creatures of state statute, the right conferred must be exercised within the time limit prescribed in the applicable state statute. *The Harrisburg*, *supra*, at 214; *Western Fuel Co. v. Garcia*, *supra*, at 242.

Contrary to petitioners' claim (Pet. 5, 9-11), *New England Maritime Co. v. United States*, 55 F. 2d 674 (D. Mass.), affirmed on opinion below, *sub nom. United States v. Gould*, 73 F. 2d 1016 (C. C. A. 1), and *Dobson v. United States*, 27 F. 2d 807 (C. C. A. 2), certiorari denied, 278 U. S. 653, are not in conflict with the decision below. The court below made explicit reference to those cases

to support its statement that “‘Damages caused by a public vessel of the United States’ would seem sufficiently broad to cover loss of life” (R. 27, note 2). But those cases differed from that at bar in an important respect, for the libels were there brought not only under the Public Vessels Act but under that Act in conjunction with the Death on the High Seas Act (41 Stat. 537, 46 U. S. C. 761, *et seq.*). See 55 F. 2d at 685, and 27 F. 2d at 808. Since the Death on the High Seas Act is specifically inapplicable to death on “waters within the territorial limits of any State” (46 U. S. C. 767), petitioners here could recover under the state statute or not at all. See *supra*, pp. 4-5.¹

The Public Vessels Act, upon which petitioners sought to found their action, was, as this Court stated in *Canadian Aviator, Ltd. v. United States*, *supra*, the last of a series of enactments intended to impose on the United States the same liability as that imposed by the admiralty law on the private shipowner. That petitioners may not here prevail is plain since their libel could not be maintained against a private shipowner under the Louisiana Civil Code because of the extinguishment of the right of action created by that Code at the end of one year. As the district court

¹ For this reason, the question involved, *inter alia*, in *American Stevedores, Inc. v. Porello and the United States*, No. 996, this Term, certiorari granted, May 6, 1946, as to the meaning of the word “damages” in the Public Vessels Act, cannot be reached in this case.

noted (R. 10-11) "the purpose of the two year period provided in the Suits in Admiralty Act was to limit not to extend rights of action. There is no apparent reason why the government should give greater rights against itself in the case of its vessels used as public vessels than exist against private owners."² While the decision in *Just v. Chambers*, 312 U. S. 383, is relied upon by petitioners for the proposition that the time within which suit may be brought under the Public Vessels Act cannot "be left to the varying provisions of the state statutes" (Pet. 6, 13-14), this Court recognized, in that very case, that uniformity in wrongful death cases is not essential. See 312 U. S. at 387-391, 392.

Petitioners present as a question involved, but make no argument concerning, the correctness of the holding below (R. 29-30) that petitioners' delay in filing the libel was not excused on "equitable" grounds (Pet. 5). In this respect, it would

² It may be further noted that petitioners could not have recovered even if the vessel had been a merchant vessel of the United States rather than a public vessel, for Section 2 of the Suits in Admiralty Act, 41 Stat. 525, 46 U. S. C. 742, provides:

In cases where if such vessel were privately owned or operated * * * a proceeding in admiralty could be maintained *at the time of the commencement of the action herein provided for*, a libel in personam may be brought against the United States * * * [Emphasis supplied].

Section 2 of the Public Vessels Act, 46 U. S. C. 782, provides that suits thereunder "shall be subject to and proceed in accordance with the provisions of" the Suits in Admiralty Act.

appear sufficient to note that before the period of the Louisiana statute had run on October 12, 1943, the Government did nothing to lull petitioners into the belief that a settlement was in contemplation; much less may anything approaching an acknowledgment of liability be gleaned from the record (R. 11-14). "The forbearance of the claimants to sue was altogether voluntary on their part, and it is not within the power of the court to relieve them from the consequence of their failure to comply with the condition of the statute." *United States v. Utz*, 80 Fed. 848, 851 (C. C. A. 3); cf. *Munro v. United States*, 303 U. S. 36; *Finn v. United States*, 123 U. S. 227; *Ritter v. United States*, 28 F. 2d 265 (C. C. A. 3).

CONCLUSION

The decision below is clearly correct, and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1946.





APPENDIX

Section 2315 of the Louisiana Civil Code (Dart 2d. ed., Vol. 2 (1945)) provides as follows:

2315 [2294] (N 1382). TORTS—LIABILITY—SURVIVAL OF ACTION.—Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it; the right of this action shall survive in case of death in favor of the children, including adopted children, or spouse of the deceased, or either of them, and in default of these in favor of the surviving father and mother or either of them, and in default of any of the above persons, then in favor of the surviving brothers and sisters, or either of them, for the space of one year from the death; provided that should the deceased leave a surviving spouse, together with minor children, the right of action shall accrue to both the surviving spouse and minor children; provided further, that the right of action shall accrue to the major children only in those cases where there is no surviving spouse or minor child or children.

If the above right of action exists in favor of an adopted person, such right of action shall survive in case of death in favor of the children or spouse of the deceased, or either of them, and in default of these in favor of the surviving adoptive parents, or either of them, and in default of any of the above persons, then in favor of the surviving children of the adoptive parents, or either of them, and in default

of these in favor of the surviving father and mother of the adopted person, or either of them, and in default of these, then in favor of the surviving brothers and sisters of the adopted person, or either of them, for the space of one year from the death.

The survivors above mentioned may also recover the damages sustained by them by the death of the parent or child or husband or wife or brothers or sisters or adoptive parent, or parents, or adopted person, as the case may be. [As amended, Acts 1884, No. 71; 1908, No. 120; 1918, No. 159; 1932, No. 159, § 1.]

Sections 1 and 2 of the Public Vessels Act of March 3, 1925, 43 Stat. 1112-1113 (46 U. S. C. 781-782), provide as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided*, That the cause of action arose after the 6th day of April, 1920.

SEC. 2. That such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of

them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of an Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

Sections 2 and 5 of the Suits in Admiralty Act of March 9, 1920, 41 Stat. 525, as amended, 47 Stat. 420 (46 U. S. C. 742, 745), provide as follows:

SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district

in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

SEC. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided*, That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises * * *

